

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ORLANDO INGRAM,

Defendant Below,
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below,
Appellee.

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No. 539, 2018

Court Below: Superior Court
of the State of Delaware

Cr. ID: K1209003136D

Submitted: April 10, 2019

Decided: June 19, 2019

Before **VAUGHN**, **SEITZ**, and **TRAYNOR**, Justices.

O R D E R

This 19th day of June 2019, after careful consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) On September 27, 2012, Dover police, acting under an arrest warrant, arrested Orlando Ingram in the living room of his sister's apartment and found a revolver under the living room couch. After a jury trial, the Superior Court convicted Ingram of possession of a firearm by a person prohibited, and we affirmed that conviction on direct appeal.

(2) Ingram then moved for postconviction relief under Superior Court Criminal Rule 61, arguing that his trial counsel was ineffective for failing to present

evidence that showed that Ingram's DNA and fingerprints could not be recovered from the revolver. The Superior Court denied his motion, and Ingram appeals to us.

(3) We affirm the decision of Superior Court. To prove its charge of PFBPP, the State may prove actual or constructive possession.¹ The jury was presented with abundant evidence of constructive possession that a lack of DNA and fingerprints was not likely to overcome. In particular, the jury heard credible testimony that (1) Ingram moved towards the couch while police were attempting to arrest him, (2) while struggling with the arresting officers, Ingram reached under the couch repeatedly, (3) during the struggle, one of the arresting officers forcibly removed Ingram's left arm from under the couch, and (4) police found a loaded revolver under the couch.

(4) We therefore conclude that there was not a reasonable probability that a jury would have acquitted Ingram even if they had heard the evidence regarding the absence of Ingram's DNA and fingerprints on the gun. Accordingly, Ingram has failed to demonstrate prejudice as required in an ineffective assistance claim.²

¹ 11 *Del. C.* § 3504.

² *Strickland v. Washington*, 466 U.S. 668, 694 (1984).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Gary F. Traynor
Justice